

September 17, 2007

Pat G. Smith, Chairman
Central Midlands Regional Transit Authority
Post Office Box 215
Columbia, South Carolina 29202

Dear Mr. Smith:

In a letter to this office you questioned whether advertising may be placed on bus stop benches at marked bus stops located within the public right of way. S.C. Code Ann. § 57-25-10 states that “[i]t is unlawful for a person to display, place, or affix a sign, as defined in Section 57-25-120(3) within a right-of-way and visible from the main-traveled way of the highway.” Section 57-25-120(3) defines a sign as “...an outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, or any part of the advertising or its informative contents.”

Pursuant to S.C. Code Ann. § 57-25-30(A),

[b]us shelters, including those on which commercial advertisements are placed, may be erected and maintained within the rights-of-way of public roads by the State. A bus shelter located within the right-of-way of a state road shall comply with all applicable requirements of the Department of Transportation, Title 23 of the United States Code, and Title 23 of the Code of Federal Regulations. A bus shelter located within the right-of-way of a road other than a state road shall comply with all applicable requirement of the municipality or county within whose jurisdiction is located.

Therefore, advertisements are allowed within the right-of-way of a public road when placed on bus shelters.

Department of Highways and Public Transportation Regulations 63-800 et seq. provide for the establishment of bus shelters. Regulation 63-802(A) states that “[b]us shelters, including those

Mr. Smith
Page 2
September 17, 2007

on which commercial advertisements are placed, may be erected and maintained on the rights-of-way of public roads subject to...(stated)...conditions and requirements....” Regulation 63-804(B) establishes building plan general specifications for bus shelters and includes the requirement of a four foot bench. As to the placement of advertisements, such regulation particularly states in subsection (C)(4) that

[t]he shelter may be equipped for displaying advertising, incorporating an enclosed standard size advertising panel with poster dimensions. The panel may provide for two advertising faces back-to-back with a lighting source contained within the panel cabinet. Only two advertisements will be allowed in each shelter. Advertisements will be limited to a poster dimension of 4' wide by 6' high. (emphasis added).

Subsection (C)(5) further provides that “[a]dvertising displays on larger shelters shall not exceed the dimensions set forth in subsection (4) above.” Regulation 63-806 states that “[a]ny existing bus shelter located on the rights-of-way of a public road in violation of the general standards above or in violation of the conditions of the permit issued by the Department is declared to be a public nuisance and its removal may be ordered by the Department.”

A letter from the Division Director of Mass Transit with the State Department of Public Transportation dealt with the subject of the issuance of encroachment permits for bus benches displaying advertisements on SCDOT right-of-ways. The letter states that

[w]hile an encroachment permit may be issued for shelters and benches within the highway rights-of-way, the law specifically dictates which structures can display advertising. Generally, South Carolina law prohibits the display of any advertisement on highway rights-of-way. However, there is a specific exemption to this law for bus shelters. Bus shelters may display commercial advertising consistent with South Carolina regulations, which limit the display to only two advertisements limited to 4' x 6' high. There is no similar exception, however, to allow benches to display commercial advertisements.

Therefore, without a change in the law and regulations, SCDOT is unable to grant encroachment permits for bus benches if they display commercial advertisements. However, if you do not intend to display advertising on the bus bench, then SCDOT may issue encroachment permits provided the benches meet all other highway specifications.

A prior opinion of this office dated March 20, 2007 stated that

Mr. Smith
Page 3
September 17, 2007

[t]his office, like the courts of this State, “generally gives deference to an administrative agency’s interpretation of an applicable statute or its own regulation.” Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). A court will reject an agency’s interpretation only when the plain language of the regulation is contrary to the agency’s interpretation. Brown v. South Carolina Dep’t Health and Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 415 (2002).

See also: Op. Atty. Gen. dated September 8, 2005. As similarly stated in Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987), “[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” This office in another opinion dated March 17, 2006 stated that “[c]ourts generally do not ‘second guess’ an agency’s interpretation of its own regulations unless clearly erroneous.”

While Section 57-25-10 makes it generally unlawful to place a sign used to advertise within a highway right-of-way, Section 57-25-30 authorizes the erection of bus shelters “including those on which commercial advertisements are placed” within highway rights-of-way. It is further specifically provided that “[a] bus shelter located within the right-of-way of a state road shall comply with all applicable requirements of the Department of Transportation.” As stated above, Regulation 63-804 in providing for building plan general specifications for bus shelters specifically authorizes the equipping of the shelter for advertising but limits such advertising to “an enclosed standard size advertising panel with poster dimensions.” It is specifically stated that “[t]he panel may provide for two advertising faces back-to-back with a lighting source contained within the panel cabinet..(and that)...[o]nly two advertisements will be allowed in each shelter.” It is further specified that any advertisements will be limited to a poster dimension of 4' wide by 6' high. While it is specifically provided that a four foot bench is to be provided at a bus shelter, no provision is made for advertising being placed on bus stop benches located within the public right of way.

As referenced above, the State Department of Transportation has indicated that it will not allow encroachment permits for bus benches if they display commercial advertisements. Again, by statute, the Department of Transportation is authorized to establish regulations for bus shelters located within a right-of-way of a state road. Consistent with the opinions referenced above, this office defers to an administrative agency’s interpretation of its own regulation, an interpretation that in this instance is consistent with the regulation in not permitting bench advertisements. Therefore, in response to your request, in the opinion of this office, advertisements may not be placed on bus stop benches at marked bus stops located within the public right of way of a state road.

Mr. Smith
Page 4
September 17, 2007

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

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Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General